

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
) Case No.
vs.) 14-CR-3106-MDH-22
)
)
BRANDON A. HOUSE,)
)
Defendant.)

SENTENCING
BEFORE THE HONORABLE M. DOUGLAS HARPOOL
WEDNESDAY, MAY 31, 2017; 9:30 A.M.
SPRINGFIELD, MISSOURI

APPEARANCES:

FOR THE PLAINTIFF: MR. RANDALL D. EGGERT
UNITED STATES ATTORNEY'S OFFICE
901 St. Louis, Ste. 500
Springfield, MO 65806

FOR THE DEFENDANT: MR. DARRYL B. JOHNSON
DARRYL JOHNSON ATTORNEY AT LAW
1885 N. Highway CC, Ste. A
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COURT REPORTER: MS. JEANNINE RANKIN, RPR, CSR
UNITED STATES DISTRICT COURT
222 N. Hammons Parkway
Springfield, MO 65806

Proceedings recorded by mechanical stenography;
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USA v BRANDON A. HOUSE
CASE NO. 14-CR-3106-MDH-22

SENTENCING

May 31, 2017

* * * * *

THE COURT: We are here for the sentencing of
Brandon House. Who appears on behalf of the United States?

MR. EGGERT: Randy Eggert for the United States,
Your Honor.

THE COURT: On behalf of the defendant?

MR. JOHNSON: Darryl Brent Johnson, Junior, Your
Honor.

THE COURT: Mr. House, would you stand.

My name is Doug Harpool. I'm a federal district
judge and it's my responsibility today to sentence you for the
crime you've committed.

The law instructs me and requires me to sentence you
to a sentence which is sufficient but not greater than
necessary to meet the objectives of the U.S. sentencing laws.
So what we'll do in this hearing is first consult those laws
and see what the Congress has authorized as a sentence for
someone who's committed the crime you committed. We'll then
look at the U.S. Sentencing Guidelines and see what the U.S.
Sentencing Commission suggests for a sentence for someone
who's committed the crime, and then we'll look at factors

1 described in Title 18, Section 3553(a) to see whether or not
2 that guideline sentence is the appropriate sentence for you in
3 this case. There's several factors the Court will consider in
4 applying that section of the law.

5 When that's done and the lawyers and I have gone
6 through that process I've just described, you'll get an
7 opportunity to say something to me, if you want to. Not
8 required to say a word, I won't hold it against you if you
9 remain silent, that's your right, but if you wish to say
10 something, I'll afford you that opportunity before I make a
11 final decision. When that's finished, I will make a final
12 decision and I'll announce it to you and explain the reason
13 for my sentence.

14 Do you understand the process we're going to follow?

15 THE DEFENDANT: I do.

16 THE COURT: Now, before I've entered the courtroom
17 I've read everything that has been submitted to me including
18 your presentence investigation report and memorandum so I know
19 some background in your case, but I want to assure you I've
20 not made that final decision. I've got ideas in my mind but I
21 haven't made a final decision and I won't until we complete
22 the hearing. Do you understand? Have you read your
23 presentence investigation?

24 THE DEFENDANT: I have.

25 THE COURT: I do have one comment.

1 Counsel, I've started a new policy that I might --
2 when I set sentencing hearings now, I am requesting that all
3 sentencing memos be submitted at least five days prior to the
4 hearing, so as a tip-off for you all in the future, you'll
5 know that.

6 MR. JOHNSON: Yes, sir.

7 THE COURT: Be seated, then, and we'll get started.

8 All right. This defendant is guilty of --
9 previously been determined to be guilty of the crime of
10 conspiracy to distribute 500 grams or more of a mixture or
11 substance containing a detectible amount of methamphetamine.
12 That is a Class A felony. The Court's understanding of the
13 law is that given defendant's situation, the lowest sentence
14 that he could receive by this Court is 20 years in prison,
15 that he could receive a sentence as long as life in prison,
16 that there would be a supervised release of not less than ten
17 years, supervised release as long as life, then payment of a
18 \$100 mandatory special assessment.

19 Any disagreement that that is the statutorily
20 authorized sentence for Count 1?

21 MR. EGGERT: No, Your Honor.

22 MR. JOHNSON: No, sir, Your Honor.

23 THE COURT: Then Count 25, the defendant also is
24 guilty of the crime of possession with intent to distribute a
25 mixture or substance containing a detectible amount of

1 methamphetamine. That is a Class B felony. The sentencing on
2 that is not more than 30 years in prison, not more than a
3 \$2 million fine, not less than six years' supervised release,
4 and a \$100 mandatory special assessment.

5 Any disagreement that that is the statutorily
6 authorized sentence?

7 MR. EGGERT: No, Your Honor.

8 MR. JOHNSON: No, sir, Your Honor.

9 THE COURT: All right. Let's move, then, from what
10 the Congress has authorized as a sentence to what the U.S.
11 Sentencing Commission suggests as a starting point in the
12 sentence calculation.

13 Mr. House, I won't get into too much detail, but the
14 U.S. Sentencing Commission's appointed by the -- is appointed.
15 They're experts in sentencing. They determine an offense
16 level -- they want every court to determine an offense level
17 and a criminal history category for every defendant. Every
18 federal district court in the United States uses those same
19 sentencing guidelines and the same mechanism by which we
20 calculate what your offense level is and your criminal history
21 category. We use this big thick book with all kinds of
22 subparts and subsections to determine what those are.

23 Once we've determined an offense level for you and a
24 criminal history category, there's a chart in the back of the
25 book and along the left-hand column there's an offense level

1 and it goes from a small number to the bigger numbers and then
2 across the top there's criminal history categories. There's
3 six categories, from one to six. Once we've made those
4 determinations, we meet on that chart where those two columns
5 meet, then that tells us what your guideline sentence is.

6 At one time a guideline sentence was a mandatory
7 sentence and the judge didn't have any discretion not to give
8 a sentence. Supreme Court, though, ruled that now it is a
9 starting point, it must be calculated in every case, but it is
10 not -- it's not binding on the Court. The Court can sentence
11 you above or below as long as your sentence is one that is
12 authorized by the Congress. All right?

13 Now, are there any objections to the determinations
14 on the sentencing guidelines that are contained in the
15 presentence investigation report that I need to address?

16 MR. JOHNSON: No, sir, Your Honor.

17 MR. EGGERT: No, Your Honor.

18 THE COURT: All right. Well, that presentence
19 investigation report concludes that the offense level is 35
20 and that the criminal history category is six. Now, that's
21 the highest criminal history category. And the offense level
22 of 35. So if you look at what the U.S. Sentencing Commission
23 guidelines suggest as a starting point for your sentence, it's
24 292 months in prison up to 365 months in prison. That is the
25 guideline sentence adopted by the U.S. Sentencing Commission

1 based on your offense level and criminal history category.

2 You understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Go ahead and be seated.

5 I guess I should ask the lawyers, given my findings
6 on offense level and criminal history category, any
7 disagreement that's the guideline sentence?

8 MR. EGGERT: No, Your Honor.

9 MR. JOHNSON: No, sir, Your Honor.

10 THE COURT: All right. So now let's go to the next
11 question. As I told you earlier, several years ago there was
12 no further question, your sentence would've had to be between
13 292 and 365 months. Now the Supreme Court has allowed us to
14 look at other factors and those are those contained in Title
15 18, Section 3553(a). Lots of factors. I'll consider every
16 one of them even if we don't mention them by name here.

17 I'm going to ask the U.S. Attorney first to talk
18 about those factors and what sentence he believes is
19 appropriate.

20 I have read your memorandum and I know your
21 recommendations but go ahead and make the record you wish.

22 MR. EGGERT: Thank you, Your Honor. And I do
23 apologize for the late filing. I do apologize.

24 THE COURT: That's kind of a new policy, so just
25 trying to get you guys used to it.

1 MR. EGGERT: Sure.

2 Your Honor, as far as my recommendation is
3 concerned, it is 240 months. I think my memorandum tends to
4 speak for itself. I would note that this defendant has a
5 fairly significant criminal history that's primarily based on
6 his use and possession of controlled substances. That is his
7 real problem and he needs to address that problem.

8 The reason why I'm asking for a sentence of 240
9 months as opposed to 292 months -- which is the low end of the
10 advisory guideline range -- is strictly based on
11 proportionality considerations in this case.

12 The Court's now had a chance to sentence many people
13 in this very large conspiracy and I believe that this
14 defendant is more like and should be considered with some of
15 the individuals that I've alluded to in my sentencing
16 memorandum, such as Gregory Jones, Jeffrey Gardner, David
17 Floyd, and Jeffrey Hatch, and I've listed out their sentences
18 and their criminal histories. The primary difference between
19 this defendant and those defendants is this defendant has a
20 prior felony drug conviction that makes his mandatory minimum
21 sentence 20 years. Because this defendant did not choose to
22 cooperate even though he was given the opportunity to, that's
23 the sentence that by statute has to be imposed without a
24 downward departure filed. We did not file a downward
25 departure in this case. So I think for proportionality

1 considerations, a sentence of 240 months is close to the 180
2 months that you gave Mr. Jones and I think that that is a fair
3 sentence in light of this defendant's role in the conspiracy
4 and as it relates to the other defendants that have previously
5 been sentenced. So we are asking for a sentence of 240
6 months.

7 THE COURT: That's the lowest I could give anyway.

8 MR. EGGERT: Yes. For this particular defendant,
9 that's the lowest you could give him, yes.

10 THE COURT: And the difference between him and Jones
11 is that the prior felony makes him a mandatory 20 under the
12 law?

13 MR. EGGERT: Yes. Gregory Jones had prior felony
14 convictions but they were not drug-related convictions. I
15 believe he had burglary convictions and other type of
16 convictions, so he was not enhanceable under the statute such
17 as Mr. House was.

18 THE COURT: All right.

19 MR. EGGERT: Thank you, Your Honor.

20 THE COURT: Mr. Johnson.

21 MR. JOHNSON: Thank you, Your Honor.

22 Judge, it's been a pleasure to represent Mr. House
23 in this case. I was his second attorney. And I agree with
24 Mr. Eggert's assessment of the sentencing guidelines and his
25 argument, his memorandum, and I, too, respectfully request

1 that Mr. House be sentenced to the minimum of 240 months.

2 Mr. House, right after I begin representing him,
3 he's accepted responsibility, pled guilty in a timely fashion.
4 And, Your Honor, along with that, respectfully request that he
5 get credit for time served under 18 U.S.C. 3585(b). Mr. House
6 was in state penitentiary in Camden and he was writtten from
7 that penitentiary to Greene County Jail based on this
8 indictment. He has been in Greene County Jail since
9 September 3rd, 2015, to today. Including today, that's 637
10 days. Judge, that's hard time in the Greene County Jail. You
11 don't -- you're not afforded sunshine, go outside and exercise
12 or anything else. So we respectfully request that since he
13 was in Greene County Jail based on this indictment that this
14 Court give him credit for that time served.

15 We also request that this Court sentence him to the
16 500-hour drug treatment program because looking at Mr. House's
17 prior criminal history, which is substantial, it's all drug
18 related. Mr. House will tell you in a heartbeat that's his
19 nemesis is drugs. So I think him getting the drug treatment
20 program, when he gets out -- he'll be in there a considerably
21 long period of time -- he won't face that again.

22 One other request, Your Honor. Mr. House requests
23 that he be sentenced to the federal facility in Greenville,
24 Illinois. Thank you.

25 THE COURT: Let me ask the U.S. Attorney, what's

1 your thinking on the credit he's requested?

2 MR. EGGERT: I believe that's an appropriate
3 request, Your Honor.

4 THE COURT: Is that something I need to do or is --

5 MR. EGGERT: I think it's automatically -- it's
6 automatically reduced by the marshal service and BOP, but I'm
7 not an expert on those things. I do think he should get
8 credit for the time he's been in custody. He's been on a
9 federal detainer since, I believe, September of 2015.

10 THE COURT: How many days did you say that was?

11 MR. JOHNSON: 637 days, Your Honor. It was
12 September 3rd, 2015, and including today that makes it 637
13 days.

14 Your Honor, I do believe that the Court has to make
15 announcement if the Court is going to give credit for time
16 served under that statute.

17 MR. EGGERT: The marshals are shaking their head in
18 the affirmative on that request, so I do believe you have to
19 make some type of announcement to give him credit for the
20 time, but I don't oppose the request, Your Honor.

21 THE COURT: Yes.

22 PROBATION OFFICER: Your Honor, since he's here on a
23 writ, without you making the order, they would not start the
24 sentence until -- or start his time until today. And I wanted
25 to say --

1 THE COURT: He would get the credit for that time on
2 his state sentence?

3 PROBATION OFFICER: Yes. But not -- not this unless
4 you order it to be retroactive. And I have the date as
5 September 2nd instead of you said September 3rd?

6 MR. JOHNSON: Yeah.

7 PROBATION OFFICER: It's going back to September 2nd
8 is when he came into custody on the writ, of 2015.

9 MR. JOHNSON: 638, then, Your Honor.

10 THE COURT: Well, let me talk about the state
11 sentence now. If he gets credit under his federal sentence,
12 they can't credit it on both the state and the federal unless
13 we order it.

14 MR. JOHNSON: That's my understanding. Judge, if he
15 would have been in the state penitentiary, it's my
16 understanding he would have been paroled about a year and a
17 half ago.

18 THE COURT: That's why I didn't understand.

19 MR. JOHNSON: Yes, sir.

20 THE COURT: All right.

21 PROBATION OFFICER: I was going to say, Judge,
22 usually what the state does is once he's sentenced in this
23 case, they usually parole him to our custody, so --

24 THE COURT: All right. That's fine.

25 Any concerns on anything that you heard?

1 MR. EGGERT: No, I think that's exactly what's going
2 to happen here, he'll get paroled by the state.

3 THE COURT: I'm asking all these questions because
4 since we're giving him the minimum sentence, I can't give him
5 a sentence -- an illegal sentence, and if we give him credit
6 he's not entitled to, then it's technically an illegal
7 sentence, so that's what I'm trying to make sure we get.

8 MR. JOHNSON: Yes, sir.

9 THE COURT: All right. Does your client wish to
10 address the Court in some way?

11 MR. JOHNSON: Your Honor, he does. Mr. House has
12 asked me to read his statement, doesn't think he can make it
13 through the whole thing, so if I may go ahead?

14 THE COURT: You're going to read it for him?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: That's fine. Go right ahead.

17 MR. JOHNSON: "To the Honorable Court: My name is
18 Brandon House and I am writing to you concerning my case which
19 you have jurisdiction. I am now moving into the sentencing
20 phase and I wanted to take the time to speak for myself for
21 the first in these proceedings of nearly two years. It is
22 important to me to convey to this Court in my own words my
23 thoughts and feelings at this time.

24 "I've had much time to think about the full impact
25 and consequences that my behavior in the past have had not

1 just personally but on my community as well. I have
2 experienced every color of the emotional spectrum one might
3 expect to feel. Of course, at first I went through periods of
4 anger, depression and self-pity but eventually realized that
5 was denial and blame and I was honest and accepted it for the
6 humility it is. I want this Court to know that I now
7 understand why my involvement in such conduct is not tolerated
8 by society and there are no excuses I can offer to justify my
9 actions.

10 "From a young age I have battled with own addiction.
11 Although my addiction history might be viewed as mitigating
12 factors in these crimes, I want to be clear that I don't wish
13 to use that fact to discount any responsibility in my case. I
14 now see that I had choices and my decisions and actions are
15 mine alone. I am truly remorseful for my actions. I'm not
16 simply remorseful because I was caught. The ripple effect of
17 my actions was enormous and the remorse I feel today is
18 heavier than I could imagine.

19 "My personal losses have taken a back seat in
20 priority to those of my family and friends. The effect my
21 actions have had on my family are astounding. I've had to
22 figure out a way to tell my mother and father that due to my
23 decisions, they will be dead before I am free again. I've had
24 to see my father though a diagnosis of cancer cells in his
25 blood from a visitation booth. My mother's health has began

1 to wane as well and I can be of no help or support to either
2 of them except through phone calls, letters and the occasional
3 visit. My nephew, for whom I love so much, will grow up
4 without an uncle to help and support him as he grows and faces
5 the trials and tribulations of life. And last, my personal
6 loss that I have deep love and affection for children and I've
7 had to be realistic and come to terms with the fact that I'll
8 probably never have kids of my own. The thought of that
9 stings deeper as I receive pictures and letters from my
10 nephew. Due to these hard-earned realizations, it is hard not
11 to plead for mercy from this Court.

12 "Just being honest, the main purpose of this letter
13 is to apologize to the Court and take full responsibility for
14 my role in this case. I would trust my sentencing to this
15 Honorable Court's judgment of what is just and fair. My only
16 request is that this Court allow me to take part in some form
17 of intensive substance abuse treatment in the Bureau of
18 Prisons so when released I'll stand in better condition than I
19 was. I also want to thank you for accepting and listening to
20 this letter and for this Court's time.

21 "Sincerely, Brandon House."

22 That's it, Your Honor.

23 THE COURT: All right. Any reason I shouldn't
24 impose sentence at this time?

25 MR. EGGERT: No, Your Honor.

1 MR. JOHNSON: No, sir.

2 THE COURT: Mr. House, it's my job to sentence you
3 at this time and to give an explanation.

4 Let me first say that you walked in the courtroom
5 facing the possibility of life in prison. That should tell
6 you what the U.S. Congress thinks about methamphetamine
7 distribution and the severity of it.

8 Not in this courtroom today are the victims of your
9 crimes. In methamphetamine sales it's kind of interesting
10 because people who have methamphetamine addictions who sell
11 methamphetamines seem to understand what a destructive impact
12 that drug has on their own life and yet in order to continue
13 to destroy their own life, they turn around and sell
14 methamphetamines to other people to destroy their lives, or
15 facilitate them destroying their lives.

16 This is a huge conspiracy you were part of. You
17 weren't a bit player. Lots of families in southwest Missouri
18 are suffering because of your actions. Just as your family
19 suffers from what's happened to you and just as you suffered,
20 those other methamphetamine sufferers are paying a huge price.

21 There are many who think the drug sentencing laws in
22 the country are too strong. This is not the forum to make
23 that argument. That's the Congress. If people think
24 sentences are too long, they need to talk to their congressmen
25 and their senators. In this court we administer the law as

1 it's written. So, therefore, you face a minimum of 20 years
2 in prison.

3 I will tell you that you're kind of getting a break
4 because one of the concerns the government has expressed is
5 trying to make sentences relative and I gave some sentences to
6 some other people who didn't face the minimum who are a little
7 bit lower than what you're getting, they didn't face the
8 minimum, and in order to be fair proportionally, then, I think
9 this lower recommendation is appropriate and I recognize that.
10 I could have easily given some of those -- in fact, the
11 guidelines were to give those people higher sentences than
12 they got and you likely would have been facing.

13 I will tell you there are others in the conspiracy
14 yet to be sentenced who are going to face higher sentences
15 than you have in all likelihood, if we pay attention to the
16 guidelines and proportionality.

17 Twenty-nine people in this conspiracy are going to
18 have sentences and have felonies on their record. As a
19 result, we're talking pounds of methamphetamines that were
20 distributed in our community over a significant period of
21 time. Knowing how destructive this drug was, it's sad to look
22 at your criminal record because from 18 you were -- had
23 methamphetamine, at 20, marijuana -- and I'm not reading them
24 all -- 22, cocaine; 25, methamphetamine; 28, methamphetamine.
25 That prior history is what's led you to face a minimum of 20.

1 I don't know how many times in this court I see
2 people like you and I just beg that the -- wished, hoped that
3 the first time you got in trouble with the law you would have
4 turned your life around because I do not enjoy giving someone
5 your age this kind of sentence. But you had many, many
6 chances and the policy makers say that once you've had that
7 number of chances and still are active in methamphetamine
8 distribution, especially to the extent you were here, you face
9 a minimum 20. That's what your sentence is going to be.

10 Pursuant to the Sentencing Reform Act of 1984, it's
11 the judgment of this Court that defendant Brandon House is
12 hereby committed to the custody of the Bureau of Prisons for
13 240 months on Count 1 and 180 months on Count 25 all to be
14 served concurrently for a total term of imprisonment of 240
15 months. Additionally, this sentence will be run concurrently
16 to any undischarged term of imprisonment in state cases
17 31307CF1206, 0931-CR02683-01 and 1231-0801363-01. The Court
18 additionally orders that your sentence should be deemed to
19 have commenced on 9/2/15 and that you should receive credit
20 for all time you've served in jail and prison since that date
21 which the Court calculates to be 638 days. But the key date
22 is September 2nd of 2015.

23 Upon release from imprisonment you'll be placed on
24 supervised release for ten years. That consists of 10 years
25 on Count 1 and six years on Count 25. Those terms will run

1 concurrently. I'm not going to impose a fine. I don't think
2 you have the ability to pay a fine. You will have to pay a
3 \$100 special assessment on each Counts 1 and 25 for a total of
4 \$200. That's due immediately.

5 While you are on supervised release you will comply
6 with the mandatory and standard conditions adopted by the
7 Court. In addition, the defendant will comply with the
8 special conditions listed in Part D, Paragraph 109 A to E of
9 the presentence investigation report.

10 I am going to recommend that you be designated to an
11 institution for participation in the 500-hour residential
12 substance abuse treatment program and the UNICOR program and
13 that you be placed -- you be considered for placement in the
14 institution located in Greenville, Illinois.

15 Mr. Eggert, do I need to finalize the forfeiture
16 order?

17 MR. EGGERT: Yes, please, Your Honor. The
18 preliminary order of forfeiture was entered on December 20th
19 of 2016. I do request that you finalize that.

20 THE COURT: This Court will finalize that order now,
21 so I impose forfeiture based on that order. And then do you
22 have counts to dismiss?

23 MR. EGGERT: No. The defendant pled without an
24 agreement, Your Honor, so he plead to every count in the
25 indictment in which he was charged.

1 THE COURT: All right.

2 Mr. House, you have a right -- I think I've
3 sentenced you to the lowest sentence that you're allowed under
4 the law but you do have a right to appeal to see if that's a
5 mistake of law or if that -- somehow we've done something
6 wrong. If so, you can appeal but you've got to do it within
7 14 days. If you don't appeal within 14 days, you might risk
8 losing some of those rights. Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right.

11 Anything further from the government?

12 MR. EGGERT: No, Your Honor.

13 THE COURT: Anything further, Mr. Johnson, on behalf
14 of your client?

15 MR. JOHNSON: No, sir, Your Honor.

16 THE COURT: Mr. House, I have given you the drug
17 treatment program that you requested. My wish for you is that
18 you can start living your own life rather than letting the
19 drugs live it for you. All right?

20 We'll be in recess.

21 (Court stands in recess at 9:56 a.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Jeannine M. Rankin, Federal Official Court Reporter,
in and for the United States District Court for the Western
District of Missouri, Southern Division, do hereby certify
that the foregoing is a true and correct transcript of the
stenographically reported proceedings.

/s/ Jeannine M. Rankin

Date: 07/19/17 Jeannine M. Rankin, CCR, CSR, RPR